

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THE MEHNER FAMILY TRUST,
RAYMOND H. MEHNER, MARK A.
MEHNER, ANDREA L. MEHNER,
ANTHONY Q. MEHNER, and
DANIELLE N. MEHNER,

Plaintiffs,

v.

U.S. BANK NATIONAL ASSOCIATION,
KOZENY & MCCUBBIN, L.C., WELLS
FARGO BANK, N.A., and REO ASSET
MANAGEMENT COMPANY LLC,

Defendants.

8:16CV367

**MEMORANDUM
AND ORDER**

This matter is before the Court after the named plaintiffs and their former attorney Christopher Pfanstiel (“Pfanstiel”) have failed to pay sanctions imposed on them for over a year. Now, plaintiffs’ current attorney of record Benjamin E. Maxell (“Maxell”) has filed a Motion to Withdraw (Filing No. 117), and plaintiff Mark A. Mehner (“Mehner”) has filed a pro se Motion for Contempt for Violation of Court Order and for Show Cause Order (Filing No. 118). For the reasons stated below, both motions are denied.

In an August 30, 2017, Order (Filing No. 112), the Court held the named plaintiffs and Pfanstiel jointly and severally liable to Kozeny & McCubbin, L.C. (“K&M”) for sanctions in the amount of \$6,544.50. On October 25, 2018, K&M filed another Motion for Sanctions (Filing No. 114), reporting that neither the named plaintiffs nor Pfanstiel paid the sanctions or explained their failure to pay.

In a December 11, 2018, Memorandum and Order to Show Cause (Filing No. 115) (“Order to Show Cause”), the Court ordered each of the named plaintiffs and Pfanstiel to

pay the \$6,544.50 in sanctions owed to K&M or show cause within thirty days why the payment has not been made. Maxell then moved to withdraw.

Taking Maxell's motion first, the Court finds that motion should be denied. Pursuant to Nebraska General Rule 1.3(f), "[a]n attorney of record may withdraw upon showing good cause, but is relieved of duties to the court, the client, and opposing attorneys only after (1) filing a motion to withdraw, (2) providing proof of service of the motion on the client, and (3) obtaining the court's leave to withdraw." The decision to allow counsel to withdraw is left to the Court's discretion. *Fleming v. Harris*, 39 F.3d 905, 908 (8th Cir. 1994). Because Maxell has failed to comply with Rule 1.3(f), his motion is denied.

Next, Mehner moves the Court to find Maxell in contempt for violating the Order to Show Cause.¹ According to Mehner, Maxell "fail[ed] to notify all the Mehner Plaintiffs of [the] most recent Order." Mehner's motion is without merit.

On December 12, 2018, Rachel Tunks ("Tunks"), Maxell's legal assistant, filed an affidavit (Filing No. 116) declaring that Maxell copied her on an email in which Maxell provided the named plaintiffs notice of the Order to Show Cause. Despite this, Mehner states the named plaintiffs received "[n]o notice, *of any kind*" and goes on to recite various correspondence with Maxell, Tunks, Pfanstiel, and K&M's counsel. The Court finds Tunks's affidavit credible and Mehner's contention preposterous. Even if not credible, Mehner has clearly received some notice, otherwise he could not have made his latest filing. Accordingly, Mehner's motion for contempt and request for fines, fees, and costs is denied.²

¹Though the Court ordinarily does not entertain pro se motions filed by represented parties, *Abdullah v. United States*, 240 F.3d 683, 686 (8th Cir. 2001), under the circumstances the Court will do so here.

²Mehner's attorney-discipline complaints have nothing to do with the unpaid sanctions, fall outside this Court's jurisdiction in this case, and are denied.

Mehner's Motion for Contempt against Maxwell appears to be nothing more than an additional attempt to muddy the waters and deflect attention from the only issue before the Court which is whether Mehner, the Mehner Family Trust, Raymond H. Mehner, Andrea L. Mehner, Anthony Q. Mehner, Danielle N. Mehner, and Pfanstiel have paid the monetary sanctions ordered by this Court over a year ago.

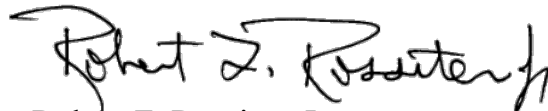
Mehner's motion is completely unresponsive to the Court's Order to Show Cause. The January 10, 2018, deadline to pay in full the \$6,544.50 in sanctions owed to K&M or show cause why the payment has not been made remains in place.³

IT IS ORDERED:

1. Benjamin E. Maxell's Motion to Withdraw (Filing No. 117) is denied.
2. Mark A. Mehner's Motion for Contempt for Violation of Court Order and for Show Cause Order (Filing No. 118) is denied.
3. Benjamin E. Maxell will serve notice of this Order to each of the Mehner parties within seven (7) days of this Order at the addresses provided in Mark A. Mehner's Affidavit (Filing No. 119) and provide the Court proof of service.

Dated this 8th day of January 2019.

BY THE COURT:



Robert F. Rossiter, Jr.
United States District Judge

³If payment is not made, all of the named plaintiffs and Pfanstiel will be required to appear for a hearing before this Court, at which time additional sanctions will be considered.